



## HUMAN RIGHTS *advocacy*



### Amnesty International's Report on Bangladesh '2003

# Death in custody, torture, arbitrary arrest and other human rights violations routinely ignored by government

AMNESTY INTERNATIONAL

FOR decades, successive governments in Bangladesh have failed to curb serious human rights violations arising from the use of legislation and widespread practices in the law-enforcement and justice system which violate international human rights standards. These violations include torture, deaths in custody; arbitrary detention of government opponents and others; excessive use of force leading at times to extra-judicial executions; the death penalty; sporadic attacks against members of minority groups; and acts of violence against women.

#### Arbitrary detention, undermining the judicial system

Each year, thousands of people are arbitrarily detained under administrative detention laws, which deny them access to judicial remedies. The most commonly used of these laws is the Special Powers Act, 1974 (SPA).

In practice, when the government invokes the SPA, it is invariably to detain members of opposition parties. When the district magistrates invoke the Act, it is usually to secure the detention of someone whose release - whether or not on bail - would, in their opinion, cause the commission of a "prejudicial act".

Although the SPA gives a wide discretion to the detaining authority to act according to its own opinion, in practice, most detention orders are declared unlawful by the high court - but only on procedural grounds. This is because the Constitution empowers the High Court to satisfy itself that a person is detained in custody under a lawful authority. Calls for the repeal of the SPA has come from the Bangladeshi legal community and human rights organisations. It has also come from political parties but only when they are in opposition. When in government, they have defended the use of the SPA and maintained it.

#### Torture in Bangladesh

For many years, torture has been the most widespread and persistent human rights violation in Bangladesh but has been routinely ignored by successive governments since Bangladesh's independence in 1971.

Children, women, the elderly, opposition politicians, criminal suspects, and innocent bystanders in the streets, have all been victims of torture. Perpetrators are most often police personnel but members of the armed forces carrying out law enforcement duties have also been involved in torture.

Methods of torture have included beating with rifle butts, iron rods, bamboo sticks, or bottles filled with hot water so they do not leave marks on the body, hanging by the hands, rape, "water treatment" in which nose pipes are fixed into each nostril and taps turned on full for two minutes at a time, the use of pliers to crush fingers, and electric shocks.

Successive governments in Bangladesh have failed to prevent torture, despite provisions in the Constitution of Bangladesh and their obligation to provide durable and effective protection against torture to the people in the country under treaties which Bangladesh has ratified.

Impunity is one of the major reasons why torture continues. Government authorities have persistently failed to bring perpetrators of torture to justice. Allegations of torture are rarely investigated, particularly when victims are members of opposition parties. On the rare occasions when allegations of torture have been investigated, this has usually been due to a public outcry generated by the death of the victim. In other cases, victims who have filed complaints about torture in police custody have been put under pressure to withdraw the case. This has most often been done by threats and intimidation, but in some instances, money has been offered to the victim in return for the withdrawal of the case as "out of court settlement".

Furthermore, judicial proceedings against a public employee - including a police officer - can proceed only if the government authorises that proceeding. In practice, the government rarely does so.

#### Legislation facilitating torture

While the constitution of Bangladesh guarantees fundamental human rights and specifically forbids torture and while torture is a criminal act under the Penal Code, a number of laws in Bangladesh create the conditions which facilitate torture. The most commonly used of these is Section 54 of the Code of Criminal Procedure. Section 54 enables the police to arrest anyone without a warrant of arrest and keep them in detention for up to 24 hours on vaguely formulated grounds. In all cases of detention under Section 54 of the Code of Criminal Procedure reported to Amnesty International, the detainees claimed that they had been tortured and that torture began from the moment of their arrest.

#### Legal immunity from prosecution to perpetrators of

#### torture

On 9 January, President Iajuddin Ahmed issued "The Joint Drive Indemnity Ordinance 2003" which provided impunity to "members of the joint forces and any person designated to carry out responsibilities in aid of civil administration during the period between 16 October 2002 and 9 January 2003". Under the ordinance, no civil or criminal procedure could be invoked against "disciplinary forces" or any government official for "arrests, searches, interrogation and other steps taken" during this period.

The Ordinance related to "Operation Clean Heart" which started on 17 October as a campaign against crime carried out jointly by army and police forces. The campaign was the government's response to growing concern within Bangladesh and the international community about the continuing deterioration in law and order, including a rise in criminal activity, murder, rape and acid throwing. At least 40 men reportedly died as a result of torture after being arrested by the army. The government acknowledged only 12 deaths and claimed they were due to heart failure. Families of the victims and human rights activists, however, claimed the deaths resulted from severe torture while in army custody.

#### High Court ruling for safeguards against torture

On 7 April 2003, the High Court announced its judgement on a writ petition in public interest filed before the court in November 1998 by three Bangladeshi human rights organisations and five concerned individuals following the death of a man in police custody in July 1998. The petition sought mandatory guidelines to prevent torture in custody after arrest under Section 54. The judgement restricts arbitrary use of administrative detention law including the Special Powers Act. It makes it mandatory for the police to inform the family members of anyone arrested; for the accused to be interrogated by an investigation officer in prison instead of police interrogation cell, and behind a glass screen so that his/her family members and lawyers can observe whether or not he or she is being tortured; and for the detainee to receive medical examination before and after remand into police custody. It empowers the courts to take action against the investigating officer on any complaint of torture if it is confirmed by medical examination. It directs the government to amend relevant laws, including Section 54, within six months to provide safeguards against their abuse, and recommends raising prison terms for wrongful confinement and malicious prosecution.

#### Lack of independent investigation bodies

The failure of successive governments to address human rights violations in a consistent and effective manner points to the desperate need for an independent, impartial and competent human rights watchdog in the country - such as a National Human Rights Commission (NHRC). Human rights defenders and the international community have been urging Bangladeshi governments to set up a NHRC. Both the previous Awami League government and the present BNP government have acknowledged the necessity for its formation, but neither have taken the appropriate action to establish it.

#### Recommendations

##### Concerning the Special Powers Act

Amnesty International considers the Special Powers Act a law designed to bypass safeguards against arbitrary detention. It allows the government to detain people who are not charged with recognisably criminal offences. It

circumvents the rules of evidence and standard of proof in the criminal justice system, leaving individuals, who should be presumed innocent unless found guilty by a court, at risk of being punished without trial. Amnesty International believes that it is a violation of fundamental human rights for states to detain people whom they do not intend to prosecute or deport. Amnesty International is therefore urging the Government of Bangladesh to repeal the Special Powers Act as it has pledged to do.

##### Concerning the use of Section 54

Establish clear and enforceable safeguards against abuse of Sections 54 of the Code of Criminal Procedure and other administrative detention procedures resulting in torture.

Ensure that the magistrates do not ignore safeguards against unlawful detention when ordering a prisoner's remand into police custody; to that

##### Treatment or Punishment

Implement the recommendations of the UN Special Rapporteur on torture to the General Assembly of July 2001

##### Concerning police training

Train police personnel in effective methods of investigation which respects human rights. Make it clear to them that any act of torture including rape and sexual abuse of detainees is a criminal act punishable by law.

Ensure that training on the gathering, analysis and preservation of evidence and other aspects of the investigation of alleged crimes, including techniques of interviewing and taking statements from suspects and witnesses, is designed to develop the capacity of the police to build a case in an efficient manner that avoids reliance on coercion.

Ensure that human rights is a permanent component of police training, reflected in long-term training plans and resources allocation. It should be key component of all basic training for new recruits. It should also be included in all relevant in-service courses, such as refresher courses, training in crime investigation skills and public order policing.

Ensure that police personnel at all levels know that they will be held personally responsible and accountable for their own actions or omissions. Police personnel at all levels should be made aware that they have a right and duty to disobey orders to carry out acts of torture or ill-treatment.

Ensure that all detainees are given immediate access to relatives, legal counsel, medical assistance and relatives after being taken in custody.

Ensure that the detainees are promptly informed of their rights to lodge complaints about their treatment.

Ensure that special training is given to the police on dealing sensitively with issues of violence against women, as well as how to deal with all women victims of crime. Female guards should be present during the interrogation of female detainees and should be solely responsible for carrying out any body searches of female detainees.

Ensure that children are detained only as a last resort and for the shortest possible time. Special training should be given to the police on the specific rights and needs of children. Training should involve how to deal sensitively with issues of violence against children, as well as how to deal with children that have been victims of crime.

Ensure that all training initiatives are linked to the creation of effective accountability mechanisms.

Establish internal monitoring and investigation procedures to ensure that allegation of human rights violations committed by police are immediately and impartially investigated and those found responsible are brought to justice.

##### Concerning the creation of a National Human Rights Commission

Amnesty International encourages the creation of a national human rights commission in Bangladesh if it conforms to Amnesty International recommendations as detailed in its publication entitled: National Human Rights Institutions: Amnesty International's recommendations for effective protection and promotion of human rights.

It urges the Government of Bangladesh to ensure from the outset that a such a commission is empowered as an independent body to investigate all instances of human rights violations impartially and completely, regardless of the identity of the perpetrator or their links to political parties.

It recommends that the creation of a national human rights commission should be accompanied by a determined government policy aimed at holding the perpetrators of human rights fully accountable, thus ensuring that those who violate human rights cannot do so with impunity.

It reiterates that the creation of such a commission should go hand in hand with a thorough review of existing legal and other institutions in order to make these more effective instruments of human rights protection.

##### Concluding remarks

The implementation of these recommendations would be a decisive and welcome step towards the fulfillment of Bangladesh's human rights obligations under international human rights treaties to which Bangladesh is a state party. These include the International Covenant on Civil and Political Rights, the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, the Convention on the Rights of the Child, and the Convention on the Elimination of All Forms of Discrimination against Women.

This is edited version of Amnesty International's report on Bangladesh.



effect, ensure that the prisoners are physically produced before the magistrates when police request a prisoner's remand into custody, and ensure that the magistrates actively take steps to ascertain whether or not the detainee has been tortured, taking care not to prejudice the detainee's safety, for example, by asking questions in the presence of the detaining police officers.

Investigate every allegation of torture through an impartial and independent inquiry to identify perpetrators of torture according to international standards.

Ensure that all perpetrators of torture and those whose negligence has facilitated torture are brought to justice without delay.

Make public all reports of previous commissions of inquiry into allegations of torture and any such torture reports.

Provide compensation to torture victims or their families.

Invite the Special Rapporteur of the United Nations Commission on Human Rights on Torture to visit Bangladesh.

Amend Bangladeshi law to reflect the provisions of the international human rights instruments to which Bangladesh is a party.

Implement the Principles on the Effective Investigation and Documentation of Torture and Other Cruel, Inhuman or Degrading

## FACTfile

# Shrimp fry collection continues defying existing law

SHISHIR MORAL and LUCILLE SIRCAR

NOW is the high season of shrimp fry collection from nature in the coastal areas. Thousands of men, women and children are engaged day and night harvesting shrimp seedlings with their push, pull and trap nets in the rivers and channels that crisscross Khulna, Shatkhira and Bagerhat district encompassing the Sundarbans.

In recognition that indiscriminate fry collection from nature is destructive, the Bangladesh Government banned collection of fries of shrimp and other fish from the coastal belt. But the law promulgated in September 2000 remains confined only in paper. Influence and pressure of the shrimp traders and interest groups have rendered the law ineffective. The officers concerned in the Forest Department have said that the government has set aside the law in consideration of severe consequences of abrupt ban on the poor fry collectors.

Most of the shrimp fry collectors in the Shibsha, Pashur, Mongla, Chunkuri and other rivers of greater Khulna region never knew about the ban on shrimp fry collection. The legal measure was taken at the higher level and then relaxed. The fry collectors continued to procure written permission for a fee from the Forest Department for fry collection.

The Sundabans, declared a world heritage in 1999 by UNESCO is considered to be particularly vulnerable due to prawn aquaculture and wild catch of shrimp fries that sustains the industry. The scene in Pashur, one of the major rivers that flows through the massive mangrove from the Mongla Port will make anyone curious. Human beings pushing through saline water, nets and boats everywhere ravage the river round the clock for months.

Fry collectors in Pashur River said that average weekly income of a boat of two persons is Tk. 2,000 fries. Abdul Rashid (30), Md. Sohrab Hossain Howladar (45) and Kamal Fakir (30) of Bottala village of Juidhara Union under the nearby Morelganj Upazila live in Jyomonir Thota during fry season. They live in a hut for Tk. 200 per month and catch shrimp fry from the Pashur river. All of them have stationary nets, boats and push nets. In their villages they are day laborers. But during the shrimp fry season they catch fries for six months. There are others who make a living out of prawn fry harvest and its trade. Middlemen and moneylenders take the fry from the collectors to the cultivators. They are often accused of cheating the fry collectors.

Jyomonir Thota is a big trading center where the fry collectors and the middlemen bring the catch twice a day. The fries come from nearby and far-off rivers in the Sundarbans. It is alleged that the Forest Department also has its share of the income from the fry trade. To catch 1,400 fries in the



Sundarbans Reserved forest a boat needs to procure a pass for Tk. 250.00 from the nearby forest office. One such forest office is Chandpai Range Forest Office. Fry collection activity is seen as farther as Katka, the south-east corner of the Sundarbans embracing the Bay of Bengal.

Fry collection is said to be a significant economic activity for the local poor. The authorities argue that if a ban is imposed on shrimp fry collection, these poor people will be out of job. This seems to be quite an argument for those who have taken fry collection as an important economic occupation for many years.

However, there are others aspects of fry harvest and its trade. Each of thousand of boats in the forest regularly collect wood and wood products

from the Sundarbans and kill myriad quantities of fries of other shrimp and fish. More importantly, these fry collectors have been pushed out of their traditional occupation in agriculture because much of the land in the coastal areas are now shrimp farms which produce a commodity, not locally consumed. In view of long term ecological destruction shrimp fry collection from Nature is banned in many countries.

Bangladesh, criticised for allowing opportunists in the shrimp industry immense leverage, took the legal measure but then digressed allegedly under pressure. The legal matter is not clear even to the government authorities in different departments. The Fisheries Officer Habibur Rahman Khondkar of Khulna district said, "We don't know how the Forest Department offices issues passes for collection in the reserved forest."

The law banning shrimp fry collection, "Protection and Conservation of Fish Rules, 1985" says, "No person shall catch or cause to be caught fry or post larvae of fish, shrimp and prawns of any kind, in any form and in any way in the estuary and coastal waters of Bangladesh" (SRO No. 289/Act/2000). This law is simply ignored and the indiscriminate shrimp harvest from nature continue as usual. Beforehand, no fry collector had required a pass. Instead, each boat required a Boat Loaded Certificate-BLC. Now after the mockery with the law the fry collectors are paying to continue their job which may prove fatal for the Sundarban ecosystem.

Shishir Moral and Lucille Sircar, researcher of Society for Environment and Human Development (SEHD).

## LAW news

# War Crimes Court indicts Liberia's President

A U.N.-sponsored war crimes court charged Liberian President Charles Taylor with crimes against humanity for a 10-year terror campaign in which tens of thousands of people were killed, raped, kidnapped or maimed in neighbouring Sierra Leone.

Taylor, a warlord-turned-president, long had been accused of running guns and keeping close ties to Sierra Leone's Revolutionary United Front, the rebels whose ruinous battle for control of Sierra Leone's diamond fields ended last year. The indictment accuses Taylor of "bearing the greatest responsibility for war crimes, crimes against humanity and serious violations of international humanitarian law," said David Crane, the American prosecutor of the joint U.N.-Sierra Leone war-crimes court that issued the indictment and subsequent arrest warrant.

The Sierra Leone tribunal was created by the United Nations and Sierra Leone to try serious violations committed since Nov. 30, 1996, when rebels signed a peace accord that failed to end the war.

Taylor sparked civil war in Liberia in 1989 with a failed coup attempt. The war killed hundreds of thousands in the West African country. He was elected in 1997 after emerging as the strongest warlord from the conflict.

Taylor aligned himself with Sierra Leone's rebels early in their war, selling them weapons in exchange for diamonds he would then sell abroad. Taylor's ties to the Sierra Leone rebels date back more than a decade to when he trained with rebel leader Foday Sankoh in Libya. Sankoh also was indicted and is in custody.

Taylor still is under U.N. sanctions for alleged gunrunning and other ties with West Africa's many rebel movements. The sanctions include a ban on travel outside of Liberia. Crane, the prosecutor, made clear he had timed the indictment to Taylor's trip abroad. In his statement, Crane said those attending the Ghana peace talks should "know they are dealing with an indicted war criminal." It was unclear who would have the standing to arrest Taylor. David Coker, a spokesman for a U.N. peace mission in Sierra Leone, called it the responsibility of the Sierra Leone government.

American and British prosecutors have taken top roles in the U.N.-Sierra Leone court. The United States, while refusing to support a standing international war-crimes court, has backed creation of individual courts such as that for Sierra Leone.

Ultimately, it took military intervention by former colonial ruler Britain, West African neighbor Guinea and the world's largest U.N. peace force to crush Sierra Leone's rebels. The government officially declared its war over in January 2002.